

No. 15475

United States
COURT OF APPEALS
for the Ninth Circuit

E. V. PRENTICE MACHINERY CO. and
PRENTICE MACHINERY WORKS, INC.,
Appellants,

vs.

ASSOCIATED PLYWOOD MILLS, INC.,
Appellee.

APPENDIX TO APPELLANTS' BRIEF

*Appeal from the United States District Court for the
District of Oregon.*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

E. V. PRENTICE MACHINERY CO.,)	
	Plaintiff,) Civil
vs.)	No. 7091
)	ORDER
ASSOCIATED PLYWOOD MILLS, INC.,)	
	Defendant.)

By order dated May 27, 1955, certain issues were segregated in accordance with Rule 42 (b) of the Rules of Civil Procedure. The court in an opinion dated August 16, 1955, held that the cause of action asserted in this case is separate and distinct from the cause of action litigated in a prior case between the parties, being Civil No. 6579. The court further held that the present action is not barred by the doctrines of res judicata and merger. In accordance with such opinion, the motion of defendant, Associated Plywood Mills, Inc., for summary judgment is denied.

Plaintiff's application for a ruling that the judgment of May 8, 1953, entered in Civil No. 6579, is res judicata in the present action and that the defendant Associated is collaterally estopped from denying the findings contained in the court's opinion of April 17, 1953, is denied. However, this denial is without prejudice to plaintiff's privilege of reasserting such claims at the trial.

Plaintiff may not read the court opinion or the findings of April 17, 1953, in Civil No. 6579, or any part thereof, to the jury or refer to them in the presence of the jury without prior authorization from the court.

Dated this 28th day of October, 1955.

Gus J. Solomon,
Judge.

